THE RIGHT TO FOLLOW TRUST PROPERTY WHEN CONFUSED WITH OTHER PROPERTY.

IT is a commonplace of text-books and cases on trusts that if the trustee converts money or property belonging to the trust and mingles it with other property, the trust is gone. The general theory on this point is well expressed by Lewis, J., in Thompson's appeal:[1] "Whenever a trust fund has been converted into another species of property, if its identity can be traced, it will be held in its new form liable to the right of the *cestui que trust*. So long as it can be identified either as the original property of the *cestui que trust*, or as the product of it, equity will follow it; and the right of reclamation attaches to it until detached by the superior equity of a *bona fide* purchaser for a valuable consideration without notice. The substitute for the original thing follows the nature of the thing itself so long as it can be ascertained to be such. But the right of pursuing it fails when the means of ascertainment fail. This is always the case when the subject-matter is turned into money and mixed and confounded in a general mass of property of the same description." If, however, it can be shown that the trust fund has gone to increase another fund, or has been used in the purchase of property, though what has been bought with trust money and what has not are entirely confused, has the *cestui que trust* only the rights of an ordinary creditor, or, if he has greater rights, what are they? It is this question which it is proposed to treat.

Throughout the discussion the word "trustee" is used broadly to indicate any one holding money or property in a fiduciary capacity, and the property is termed the trust fund, and the beneficial owner the *cestui que trust*. As the principles determining the rights of the parties are the same in every fiduciary relation, whether strictly that of trustee and *cestui que trust*, principal and agent, executor or administrator, and heirs or legatees, the terminology adopted is convenient and not misleading.

The question most frequently arises when the trustee, after having used the trust property, becomes insolvent and the *cestui que*

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[1] 22 Pa. St. 16.

trust endeavors to make good a claim to priority against the general creditors. If the trust fund were traceable to a separate piece of property the right to that property would be clear,[1] and it is inequitable if the chance circumstance that the trustee has mingled the trust money with his own should deprive the *cestui que trust* of all rights against the property which his money has purchased, and such a distinction could only be defended on the ground that when the trust fund is confused with other money it is beyond the power of the court to give the relief which it gives when the money is not mingled. This does not seem to be the case, though formerly the Court of Chancery may have so considered it. If the trust fund is traceable as having furnished in part the money with which a certain investment was made, and the proportion it formed of the whole money so invested is known or ascertainable, the *cestui que trust* should be allowed to regard the acts of the trustee as done for his benefit, in the same way that he would be allowed to if all the money so invested had been his; that is, he should be entitled in equity to an undivided share of the property which the trust money contributed to purchase, — such a proportion of the whole as the trust money bore to the whole money invested.

The reason in one case as in the other is that the trustee cannot be allowed to make a profit from the use of trust money, and if the property which he wrongfully purchased were held subject only to a lien for the amount invested, any appreciation in value would go to the trustee.

It will often happen, however, that the *cestui que trust* cannot identify any property as being purchased wholly or in a fixed proportion with his money, and therefore equity cannot regard him as the owner of any property either individually or in common, and yet that he can show that the trust fund has gone to swell the general assets of the trustee's estate, for instance, if used in a general business which soon afterwards becomes insolvent. In such a case there can be no trust, strictly speaking. It is as necessary for equitable as for legal ownership that there should be fixed property as the subject-matter of it. In both cases the necessity rests rather on the nature of things than on any rule of law. It would, however, be in the highest degree unjust that the rights of the *cestui que trust* should be made to depend on whether his property

[1] 1 Perry on Trusts, § 127.

is distinguishable from the general mass of the trustee's property, or indistinguishable. Though indistinguishably confused, still his money or his money's worth is there, and if the machinery of the court can work it out he should be enabled to get at it. Equity accomplishes justice in this case by giving the *cestui que trust* a lien on the property of the trustee, analogous to the vendor's lien, — a right to be paid from the estate in priority to the general creditors.

This latter right the *cestui que trust* always has, even though he may also be able to follow his money into a certain investment.[1] In case the investment has turned out badly, it would be for his advantage not to regard the investment as having been made for him, not to treat it as his property, but to assume that it has been wrongfully converted, and take a lien on what was purchased with his money and come in with the general creditors for the deficit occasioned by the depreciation of the investment.[2]

The different classes of cases involving these points will now be examined somewhat more particularly.

If a trustee purchase real estate partly with his own money and partly with trust money, it is universally allowed that the *cestui que trust* has a claim in equity against the land, but the exact nature of the right allowed is not entirely uniform. If the property purchased should increase in value, it is for his interest to obtain an undivided share of it, rather than a lien on the property for the bare amount of the trust money put in. If the proportion which the trust money bore to the purchase money is known or ascertainable, the larger right should, it seems, be allowed, as the trustee's estate otherwise benefits by the misappropriation. The question has not, however, been very fully discussed and the decisions are not uniform. In England the point can hardly be considered entirely settled, but in Knatchbull *v.* Hallett,[3] Sir George Jessel, M. R., after speaking of the *cestui que trust's* right "to elect either to take the property purchased, or to hold it as a security for the amount of the trust money laid out in the purchase," makes the dictum: "But in the second case, where a trustee has mixed the money with his own there is this distinction, that the *cestui que trust*, or beneficial owner, can no longer elect to

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[1] 1 Perry on Trusts, § 128.

[2] Riehl *v.* Evansville Foundry Assoc., 104 Ind. 70.

[3] 13 Ch. D. 696, 709.

take the property, because it is no longer bought with the trust money purely and simply, but with a mixed fund. He is, however, still entitled to a charge on the property purchased for the amount of the trust money laid out in the purchase."

In Massachusetts it is held that where the consideration for the purchase of land is paid in part only by one person and the title is taken in the name of another, no resulting trust will be created unless "the part of the purchase money paid by him in whose favor the resulting trust is sought to be enforced be shown to have been paid for some specific part or distinct interest in the estate, for 'some aliquot part' as it is sometimes expressed; that is, for a specific share, as a tenancy in common or joint tenancy of one-half, one-quarter, or other particular fraction of the whole; or for a particular interest, as a life estate, or tenancy for years, or remainder in the whole; and a general contribution of a sum of money towards the entire purchase is not sufficient." [1] As this is the case where the transaction is rightful, it was supposed to follow that when the consideration was wrongfully paid in part with the *cestui que trust's* money he could not claim a specific portion of the land, for the misappropriated money must have been used as a general contribution only to the purchase money, and consequently he would not be entitled to a specific share under the rule above given. The point was so decided in Bresnihan *v.* Sheehan.[2]

The considerations, however, determining the rights of the *cestui que trust* when his money has been wrongfully used as part of the consideration, are different from those determining the rights of one who has paid part of the consideration, the conveyance being taken in the name of another. In the latter case there is a resulting trust, which depends on the presumed intention of the parties.[3] When A pays the purchase money and B takes the title, equity compels B to hold the title in trust for A, because it is presumed that was the intention; and similarly when A pays only a part, the court will regard B as holding an aliquot part proportioned to the amount paid, in trust for A, if it is presumed that such was the intention. The Massachusetts court in effect decided that if A's intention was not expressed, that the money which he furnished should pay for an

[1] M'Gowan *v.* M'Gowan, 14 Gray, 119. [2] 125 Mass. 11.

[3] 1 Perry on Trusts, § 125. If the evidence shows no trust was intended, none will result although the purchase money was not paid by the grantee. Livermore *v.* Aldrich, 5 Cush. 431; Bibb *v.* Smith, 12 Heisk. 728; Carter *v.* Montgomery, 2 Tenn. Ch. 216; Darrier *v.* Darrier, 58 Mo. 222; Seibold *v.* Christman, 75 Mo. 308.

aliquot part, the court could not presume it. And similar decisions have been reached elsewhere.[1] Other courts have reached an opposite conclusion.[2] The real difference is on the question whether it is a fair inference from the simple fact that A paid $3,000 and B paid $2,000, B taking the title, that the intention of the parties is that A shall have three-fifths interest in the land and B two-fifths, or, on the other hand, that the intention is that the land shall be B's, A's only interest in it being to secure a debt to him. Consider now the case where misappropriated trust money forms a part of a purchase by the trustee. The rights which the *cestui que trust* has of following the property rest, not on any presumed intention, but on the principle devised for the protection of beneficiaries of trusts that the trustee cannot be allowed to make a profit for himself by dealing with the trust estate. To avoid this the *cestui que trust* should be allowed to regard the investment of his money in the way most favorable to him, throwing the risks on the wrong-doer. So that if the property decreases in value the *cestui que trust* would take only a lien on the property, but if it increases in value, he should be allowed to treat the transaction as if for his benefit, that is, he should be allowed to claim a proportional part of the property. This, though often called a resulting trust, is properly a constructive trust, being purely the consequence of rules of equity, irrespective of intention.

In Day *v.* Roth[3] also the court gave the plaintiff, whose money had been used in the purchase of the property in question, an equitable lien, but there is nothing in the case to show that any greater right was asked.

According to the latest decisions in Pennsylvania, the *cestui que trust* may recover a specific share, and he is confined to that relief, for the court repudiates the whole doctrine of equitable lien. In a recent case[4] misappropriated trust money belonging to the plaintiff was used in improving land, and the plaintiff was endeavoring to secure a right against the land. Gordon, J., in delivering the opinion of the court, made use of the following language: "It is said the money of these beneficiaries has been used to improve this property, and that they ought, therefore, to have a lien

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1 Ames' Cas. Trusts, 289; Shaffer *v.* Fetty, 4 S. E. Rep. 278 (W. Va.).

2 Springer *v.* Springer, 114 Ill. 550; Bowen *v.* McKean, 82 Mo. 594; Shaw *v.* Shaw, 86 Mo. 594; Parker *v.* Coop, 60 Tex. 111.

3 18 N. Y. 448.

4 Appeal of Cross and Gault, 97 Pa. St. 471.

upon it to the extent of the moneys so expended, but what kind of a lien? Not a statutory one. . . . A lien arising from the equitable circumstances of the case? But such a lien is unknown in Pennsylvania jurisprudence. It has not been as yet engrafted upon our legal system, and it is to be hoped never will be." Sharswood, C.J., dissented. An earlier case,[1] where trust money was deposited in a bank with other money, had held that the beneficiaries did not lose their rights; but dicta to the contrary occur in the People's Bank Appeal,[2] and also in Hopkins' Appeal.[3] Though an equitable lien is thus disallowed, the very recent case of M'Laughlin *v.* Fulton[4] allowed a woman, whose money had been invested by her son with his own, to recover specifically $\frac{33}{63}$ of the land, that being the ratio her money bore to the whole purchase price.

The general rule in this country allows the *cestui que trust* to recover a specific share of the property purchased. In White *v.* Drew,[5] the trustee bought land for $1,590; $950 of this was paid with money in his hands as administrator. The land was sold under order of the court for over $6,000, and the plaintiff received $\frac{950}{1590}$ of this. In Tilford *v.* Torrey,[6] the court, although finally deciding that there was not sufficient evidence to hold the defendant, in discussing the question, said, "If part only of the purchase money be paid with trust funds, a resulting trust will be created to the extent of the payment, or the *cestui que trust* may charge the land with the repayment to him of the sum so paid." Similarly, in Greene *v.* Haskell,[7] where the agent of the plaintiff, contrary to his instructions, invested funds of his principal together with his own in the purchase of ivory, the court decreed that the ivory should be sold by a master, and that the plaintiff was entitled to take the amount misappropriated, with interest, or his proportionate amount, from the proceeds. In other jurisdictions also the decisions or remarks of the court favor this view.[8]

A question, similar to that which has been considered, arises where trust money is paid into a bank to the private account of

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[1] Farmers' and Mechanics' National Bank *v.* King, 57 Pa. St. 202. See also Rupp's Appeal, 100 Pa. St. 531.

[2] 93 Pa. St. 107.

[3] 9 Atl. Rep. 867.

[4] 104 Pa. St. 161.

[5] 42 Mo. 561.

[6] 53 Ala. 120.

[7] 5 R. I. 447.

[8] Robarts *v.* Haley, 65 Cal. 397; Bazemore *v.* Davis, 55 Ga. 504; Fausler *v.* Jones, 7 Ind. 277; Derry *v.* Derry, 98 Ind. 319; Morrison *v.* Kinstra, 55 Miss. 71; Lyon *v.* Atkin, 78 N. C. 258; Watson *v.* Thompson, 12 R. I. 466.

the trustee, funds of his own being paid to the same account. Here the question is not whether the *cestui que trust* is entitled to a lien or to a proportionate part, for it is entirely immaterial in the case of money, but whether he has any rights at all against the bank account. There can be little doubt that, according to the older English precedents, the question would have to be answered in the negative. Money when mixed with other money could not be followed, because it had no ear-mark. A consideration of these old cases led Justice Fry, so late as 1879, to decide that the rights of the *cestui que trust* were gone.[1] It had been decided, however, in Pennell *v.* Deffell,[2] that the *cestui que trust* was entitled in equity to his money though mingled with other money, and did not become an ordinary creditor. This case was followed by Frith *v.* Cartland,[3] and other cases.[4] But, as stated before, Mr. Justice Fry, finding it impossible to reconcile the early decisions with the late ones, took the extraordinary course of following the early cases and disregarding the later ones, though admitting their doctrine to be preferable. The law on the subject was thus in a very unsettled state till Sir George Jessel, M.R., in a case involving the state of facts now under consideration,[5] made a thorough review of the whole subject. He frankly admitted that formerly equity would give no relief, but was of opinion that the modern doctrine in equity was at variance, that equity had advanced. He accordingly overruled Mr. Justice Fry's decision, and again placed the matter in a satisfactory shape. Any other result would involve the consequence that a trustee by simply putting one dollar of his own with a sum of trust money would make himself merely a debtor instead of a trustee, although the trust fund were still in existence and in his possession. The doubt arose because the judges were not (to quote Jessel's words), "Aware of the rule of equity, which gave you a charge — that if you lent £1,000 of your own and £1,000 trust money on a bond for £2,000 or on a mortgage for £2,000, or on a promissory note for £2,000, equity could follow it, and create a charge." The case has been followed very recently.[6]

In this country what Sir G. Jessel calls the modern doctrine of

[1] *Ex parte* Dale, 11 Ch. D. 672.

[2] 4 De G., M. & J. 372.

[3] 2 H. & M. 417.

[4] Brown *v.* Adams, L. R. 4 Ch. App. 764; *Ex parte* Cooke, 4 Ch. D. 123; Birt *v.* Burt, 36 L. T. Rep. 943.

[5] Knatchbull *v.* Hallett, 13 Ch. D. 696.

[6] Gilbert *v.* Gonard, 54 L. J. Ch. 439.

equity has generally found favor with the courts.[1] But in two States, at least, there are decisions to the contrary.[2] They rest on the simple fact that the subject-matter of the trust is confused with other property. For instance, in Steamboat Co. *v.* Locke[3] the court say: "The bill states in substance that S at the time of his death had on deposit upon his individual account $898.08, and that 'said deposit included and covered' a balance of $559.35 held by said S in trust, and the prayer of the bill is, that the defendant as administrator upon S's estate may be required to pay over said balance. It is plain from these statements that the trust funds were not only deposited to the private and individual account of S, but that the funds had become in some way mixed with other funds belonging to him, for the balance claimed to be due from him to the company is considerably less than the amount remaining on deposit in the bank. The identity of the trust fund is therefore lost, and in such a case the *cestui que trust* can stand no better than other creditors." Such reasoning as this shows that the court had in mind the possibility of a strict trust only, and not a charge on the whole fund to the amount of the trust.

In most of the cases which come up on this point there is a complicating circumstance not hitherto mentioned. That is, the trustee, after mingling his own money and the trust money in his private account, draws on the account to a greater or less extent. Can the *cestui que trust* still claim to be reimbursed in full from the amount left on deposit, or should it rather be held that a portion of the fund withdrawn was his money? It is a general rule of presumption, when it becomes important to decide to which of several deposits drafts on the account should be charged, that the deposits shall be deemed to have been drawn out in the same order in which they were put in, so that each draft when paid would be charged against the earliest deposit in the account.[4] This rule was applied in Pennell *v.* Deffell,[5] the court deciding that it made no difference that some of the deposits were of trust money.

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1 Third Nat. Bank *v.* Stillwater Gas Co., 21 Am. Law Rev. 192 (Minn.); Rabel *v.* Griffin, 12 Daly, 241; Van Alen *v.* American Nat. Bank, 52 N. Y. 1; Farmers' and Mechanics' Nat. Bank *v.* King, 57 Pa. St. 202 (see *supra*); Overseers *v.* Bank of Va., 2 Gratt. 544; Nat. Bank *v.* Ins. Co., 104 U. S. 54.

2 Neely *v.* Rood, 54 Mich. 134; Goodell *v.* Buck, 67 Me. 514; Steamboat Co. *v.* Locke, 73 Me. 370; *Ex parte* Hobbs, 14 N. B. R. 495.

3 73 Me. 370.

4 Clayton's Case, 1 Mer. 608.

5 4 De G., M. & J. 372.

Subsequent English cases followed this decision.[1] In Knatchbull *v.* Hallett,[2] however, the court (Thesiger, L. J., dissenting, as he felt bound by authority), after having disposed of the view that the *cestui que trust* had no claim at all, decided that the presumption did not apply where the balance was composed in part of trust funds and in part of the trustee's private funds, but that in such a case it should be presumed that the trustee drew out what he had a right to use, that is, his own money. It certainly should not be presumed unnecessarily that the trustee is a wrong-doer. It frequently happens that a trustee deposits trust money to his private account, not from any bad intent, but merely from ignorance of the duties of his position, and he carefully keeps a balance at least as great as the amount of the trust. The presumption of the court should be that fair dealing was intended, so far as the facts proved will allow such a presumption. The American cases which allow the *cestui que trust* any right against such a mingled deposit are in accordance with the later English rule.

Let it be supposed, however, that the balance at some time falls below the amount of the trust money. In such a case the conclusion cannot be avoided that as to the difference between the two the trust money has been withdrawn, so that as to this difference the *cestui que trust* must follow it into what is purchased with it, or if unable to do that, must take the position of an ordinary creditor. Nor will subsequent deposits of the trustee's own money give any larger right in the absence of special circumstances indicating an intention on the part of the trustee to fill the deficit in the amount of the trust money, for such an intention cannot be presumed. Unless such an intention be shown, therefore, the equitable charge on the account can never exceed the smallest balance to the trustee's credit, since the deposit of the trust money. Thus, if the balance were reduced to nothing, even for a day, the *cestui que trust* would have no specific claim.

In all the cases hitherto considered, the trust money has been traced into some specific investment or deposit, although confused with other property. The case remains to be considered where this cannot be done, but a whole estate can be shown to be increased by the amount of a trust fund. A case illustrating this well is People *v.* The Bank of Rochester.[3] The defendant bank

[1] Merriman *v.* Ward, 1 J. & H. 377; Frith *v.* Cartland, 2 H. & M. 417; Brown *v.* Adams, L. R. 4 Ch. 764; *Ex parte* Cooke, 4 Ch. D. 123.

[2] 13 Ch. D. 696.

[3] 96 N. Y. 32.

had discounted notes for H, and the latter, wishing to anticipate payment, gave the bank checks for the amount of the notes less rebate of interest. These checks the bank received and charged to H's account as depositor, and made entries in its books that the notes were paid. As a matter of fact, the bank had previously sold the notes. About a month after this, and before the notes became due, the bank failed. It was held that an order requiring the receiver to pay the notes out of the funds in his hands was properly granted; that the transaction between the bank and H was not in their relation of debtor and creditor, but that by it a trust was created, the violation of which constituted a fraud by which the bank could not profit and to the benefit of which the receiver was not entitled.

In two cases in Kansas,[1] the facts were very similar and the decisions the same as in People *v.* Bank of Rochester,[2] and the same principle is involved in other decisions.[3] The decided weight of authority is shown by these cases. In the case of Illinois Trust & Savings Bank *v.* The First National Bank of Buffalo[4] the Circuit Court for the northern district of New York reached an opposite result, holding that though the defendant had collected a draft as agent for the plaintiff, and had kept instead of remitting the proceeds, and in a few days had suspended payment, the plaintiff had no priority over other creditors. But three years later the Supreme Court of New York decided[5] on almost precisely the same facts that the party sending the draft for collection was entitled to such priority, the court saying, "If the identical money collected by the bank did not pass into the hands of the receiver it makes no difference, for, in some shape or form, they went to swell the assets which fell into his hands."[6]

There were several decisions[7] under the late national bankruptcy

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[1] Peak *v.* Ellicott, 30 Kan. 156; Ellicott *v.* Barnes, 31 Kan. 170.

[2] 96 N. Y. 32.

[3] Harrison *v.* Smith, 83 Mo. 210 (overruling Mills *v.* Post, 76 Mo. 426); Stoller *v.* Coates, 88 Mo. 514; Thompson *v.* Gloucester Bank, 8 Atl. Rep. 97 (N. J.); People *v.* Bank of Dansville, 39 Hun, 187; McColl *v.* Fraser, 40 Hun, 111; McLeod *v.* Evans, 66 Wis. 401.

[4] 15 Fed. Rep. 858; and see, to the same effect, Bank of Commerce *v.* Russell, 2 Dill. 215.

[5] People *v.* Bank of Dansville, 39 Hun, 187.

[6] A decision to the same effect has recently been rendered in New Jersey, Thompson *v.* Gloucester Bank, 8 Atl. Rep. 97.

[7] White *v.* Jones, 6 N. B. R. 175; *In re* Hosie, 7 N. B. R. 601; *In re* C. & T. B. Manuf'g Co., 12 N. B. R. 203.

law, denying the *cestui que trust* any priority. In none of them is there any discussion of the question, and the decisions are based on the wording of the Bankrupt Act very largely. "A proper construction of this clause [exempting trust property from assignment on the trustee's bankruptcy] of the Bankrupt Act will only apply it to property still held *in specie* and which can be distinguished from other property of the bankrupt, or where the proceeds constitute a separate and distinct fund, — not to cases where they have become mingled with the general assets of the bankrupt, even by his wrongful act." [1]

It is frequently of the utmost importance how far the burden is placed on the *cestui que trust* to make out that his property actually forms a part of the whole estate on which he is endeavoring to obtain a lien, that is, how much he must prove to make out a *prima facie* case. If he had to show not only that his property had been mingled with the trustee's, but also that in the payments made from the combined property the money in fact used was not derived from the trust, he could seldom make out his case. It has been held, therefore, that the wrongful commingling of the property being shown, it is incumbent on the trustee to show what property is his,[2] and it follows that in the case supposed the *cestui que trust* need not show that payments made indiscriminately from the mixed funds were not made with his money, but the trustee must show that they were if he wishes to disprove the claim of the *cestui que trust* to an equitable charge; and the assignee in bankruptcy or creditors of the trustee can have no greater right than the trustee himself.

A distinction, however, should be observed which has not always been noticed by the courts.[3] It is not enough that the trust money should have been used to the benefit of the private estate. Unless the court is of opinion that the trust fund forms part of the estate under consideration, the *cestui que trust* can have no other standing than that of an ordinary creditor. If, for instance, the trustee pays his private debts with the money of the *cestui que trust*, it cannot give a lien on the trustee's estate. To allow this would be injustice to the simple creditors, as may easily be seen by taking a concrete example. A is trustee of $10,000 for B.

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[1] *In re* C. & T. B. Manuf'g Co., 12 N. B. R. 203.

[2] 1 Perry on Trusts, § 128.

[3] McColl *v.* Fraser, 40 Hun, 111; McLeod *v.* Evans, 66 Wis. 401.

He has $20,000 of property of his own, and is indebted $30,000. He takes the trust money, and with it reduces his indebtedness to $20,000. Now if B is allowed a lien on A's private property there will be but $10,000 left for the other creditors, from which they will get fifty cents on the dollar, whereas, if A had not touched the trust money, there would have been $20,000 to pay $30,000 debts, or sixty-six cents on the dollar.

It was suggested in a dissenting opinion in McLeod *v.* Evans,[1] that the *cestui que trust* should receive priority to the extent which the estate had benefited by the misappropriation, irrespective of whether any part of the trust money was in any form in the estate; but it is believed that this is mistaking the true reason for allowing priority, which is brought out in a very recent case in New York.[2] The court say: "The courts below seem to have proceeded upon a supposed equity springing from the circumstance that, by the application of the fund to the payment of White's creditors, the assigned estate was relieved *pro tanto* from debts which otherwise would have been charged upon it, and that thereby the remaining creditors, if entitled to distribution, without regard to the petitioner's claim, will be benefited. We think this is quite too vague an equity for judicial cognizance, and we find no case justifying relief under such circumstances."

"If it appears that trust property has been wrongfully converted by the trustee and constitutes, although in a changed form, a part of the assets, it would seem to be equitable and in accordance with equitable principles that the things into which the trust property has been changed should, if required, be set apart for the trust, or, if separation is impossible, that priority of lien should be adjudged in favor of the trust estate for the value of the trust property entering into and constituting a part of the assets. This rule simply asserts the right of the true owner to his own property."

Samuel Williston.

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[1] 66 Wis. 401.

[2] Matter of Cavin *v.* Gleason, 105 N. Y. 256.